REMARKS

Claims **1-29** are pending in the application, claims 28 and 29 having been added herein.

Claims **1-27** stand rejected.

Claim **7** has been amended to correct an antecedent basis error.

Claims **9 and 17** have been amended to correct a claim error that was discovered during preparation of the present response. The error was regarding the condition for selecting the claimed "second non-zero rate." The amendment was clearly required by the original specification and does not add any new matter.

Claims **1, 10, 18,** and **24** have been amended to further distinguish the claims from the cited reference. Support for the amendments can be found on page 12, lines 12-22 of Applicants' original specification and do not add new matter.

Claims **28** and **29** have been added and include all the limitations of original dependent claims 7 and 8, respectively.

Interview Summary Record of Scheduled March 29, 2006 Examiner Interview

Appreciation is expressed for the Examiner's telephonic confirmation that the scheduled interview of March 29, 2006 between Examiner Tang and Applicants' attorney, Russell Scott (U.S. PTO Reg. No. 43,103) would not be necessary. In a brief teleconference on March 27, 2006, Examiner Tang acknowledged that, upon further review, the 35 U.S.C. § 112 rejection of the instant Office Action would be withdrawn in view of Applicants November 1, 2005 response. Applicants agreed to resubmit in the present response the previous rational for the withdrawal of the 112 rejection. Applicants believe the following comments clearly state Applicants' position and are in harmony with the Examiner's understanding as discussed in the teleconference.

Rejection of Claims under 35 U.S.C. § 112

Claims 1 and 7 stand rejected under 35 U.S.C. § 112, second paragraph, as failing to point out and distinctly claim the subject matter for which the Applicants regard as the invention.

Applicants respectfully traverse this rejection because claims 1 and 7 use the terms "subsequent" and "prior" consistently. The terms are used with respect to two different aspects altogether. Specifically, claim 1 recites the action of "transmitting data ... to a memory for storage." This action occurs twice in claim 1, the second time that the action occurs follows, or is subsequent to, the first time that the action occurs. Alternatively, claim 7 refers to data that was stored in a memory device. The data is used for generating a "data quantity value." Data quantity values represent the data that has been stored in the memory device. In claim 7, a second data quantity value is generated from data that was stored in the memory device at a different point in time than the storing point of data that was used to generate the first data quantity value. Specifically, claim 7 states that the second data quantity value is generated from data that was stored at a point prior to the point when the data was stored that was used to generate the first data quantity.

In other words, the term "subsequent" of claim 1 relates to different times for the action of transmitting data, while the term "prior" of claim 7 relates to the times that data was stored. Thus, Applicants respectfully submit that the terms "subsequent" and "prior" of claims 1 and 7 relate to different claim terms and the term ordering is consistent in the claims thereby supporting Applicants' assertion that the claims are clear and unambiguous. Therefore, Applicants urge the Examiner to withdraw the 112 rejection of claims 1 and 7.

Rejection of Claims under 35 U.S.C. § 102

Claims 1-27 stand rejected under 35 U.S.C. § 102(e), as being anticipated by Aimoto et al., U.S. Patent No. 6,144,636 (Aimoto). While not conceding that the cited reference qualifies as prior art, but instead to expedite prosecution, Applicants have chosen to amend independent claims 1, 10, 18, and 24. Applicants reserve the right, for example, in a continuing application, to establish that the cited reference, or other references cited now or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed.

MPEP 2131 makes clear the requirements for anticipation:

> "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... "The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).
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> (emphasis added)

Thus, in addition to showing every element, the reference must teach their arrangement as required by the claim. After careful review, Applicants believe that Aimoto does not teach Applicants' claimed invention.

As generally recited in Applicants' amended independent claim 18, Applicants' amended independent claim 1 recites a method for

> a transmitting device transmitting data at a first non-zero rate to a memory for storage therein during a first period of time;
> the transmitting device transmitting data at a second non-zero rate to the memory for storage therein during a second period of time;

the transmitting device transmitting high priority data to a high priority buffer in the memory and low priority data to a low priority buffer in the memory;
wherein the second period of time is subsequent to the first period of time, and;
wherein the second non-zero rate is greater than or less than the first non-zero rate.

Applicants have amended independent claims 1 and 18, respectively, to include the additional limitation of "the transmitting device transmitting high priority data to a high priority buffer in the memory and low priority data to a low priority buffer in the memory" which is clearly absent from Aimoto. Thus, Applicants respectfully submit that the 35 U.S.C. § 102(e) rejection of amended independent claims 1 and 18 should be withdrawn.

As generally recited in Applicants' independent claim 24, Applicants' independent claim 10 recites an apparatus comprising:

a memory device configured to receive data from a transmitting device for storage therein, the memory device including a high priority buffer for high priority data and a low priority buffer for low priority data;
a formatter configured to generate and send at least one of a plurality of control codes;
a circuit configured to generate and transmit a rate control signal instructing the transmitting device to stop transmitting data to the memory device at a first non-zero rate and to begin transmitting data to the memory device at a second non-zero rate;
wherein the second non-zero rate is greater than or less than the first non-zero rate

Applicants have amended independent claims 10 and 24, respectively, to include the additional limitation of "the memory device including a high priority buffer for high priority data and a low priority buffer for low priority data" which is clearly absent from Aimoto. Thus,

Applicants respectfully submit that the 35 U.S.C. § 102(e) rejection of amended independent claims 10 and 24 should be withdrawn.

In addition, regarding dependent claims 7 and 15, Applicants respectfully submit that Aimoto fails to teach, disclose, or otherwise suggest the claimed "generating a second data quantity value representing a quantity of data stored in the memory device at a second point in time." Further, because the cited portions of Aimoto do not show the claimed "generating a second data quantity value," the cited portions of Aimoto cannot show the claimed "comparing the first data quantity value to the second data quantity value" as recited in dependent claim 7.

Regarding dependent claim 8, Applicants respectfully submit Aimoto discloses "a FIFO length counter 304" that "counts up" when a cell is input thereto and "counts down" when a cell in output therefrom (Aimoto, col. 11, lines 16-20).

> The FIFO length counter 304 indicates the buffer use state of the whole FIFO circuit 302. It counts up when the cell is input thereto from the crossbar switch circuit 105, while it counts down when the cell is output to the congestion information notification circuit 134. Thus, *the current value of the number of cells is held* for every VCI. The status of the FIFO length counter 304 is sent to the FIFO congestion level decision circuit 430 via a signal line 322.
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> (Aimoto, col. 11, lines 16-23, italics added for emphasis)

Aimoto's "current value of the number of cells" is not an input count, nor is it an output count as claimed by Applicants in dependent claim 8. The cited portion of Aimoto depicts maintaining a count value by counting up when cells arrive, and counting down when cells depart, but no count is measured for the number of cells that arrive. Further, no separate count is measured for the number of cells that depart. Thus, Aimoto fails to teach, disclose, or otherwise suggest Applicants' dependent claim 8.

For at least the above reasons, Applicants urge the Examiner to withdraw the 35 U.S.C. § 102(e) rejection of amended independent claims 1, 10, 18, and 24. Regarding dependent claims 2-9, 11-17, 19-23, and 25-27, as these claims add limitations to otherwise allowable base claims and for other reasons stated herein, Applicants request the Examiner to withdraw any remaining 35 U.S.C. § 102(e) rejections of the Office Action.

Of note, Applicants have added independent claims 28 and 29 which include the limitations of dependent claims 7 and 8, respectively. Applicants respectfully submit that these new independent claims are allowable as discussed above with respect to the corresponding dependent claims 7 and 8.

CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5089.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on **April 19, 2006**.

Russell C Scott — 4/19/06
Attorney for Applicants — Date of Signature

Respectfully submitted,

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